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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 PETER PAUL HANNAH,

10 Plaintiff,

11 v.

12 HANNOVER MARRIOTT,

13 Defendant.

CASE NO. C10-5926BHS

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16 ORDER DENYING MOTION
17 FOR LEAVE TO PROCEED IN
18 FORMA PAUPERIS AND FOR
19 MOTION TO APPOINT
20 COUNSEL

21 This matter comes before the Court on Plaintiff's ("Hannah") *ex parte* motions for
22 leave to proceed in forma pauperis (Dkt. 1) and for appointment of counsel (Dkt. 2). The
23 Court has considered the pleadings filed in support of these motions and the remainder of
24 the file and hereby denies the motions for the reasons stated herein.

25 **I. DISCUSSION**

26 **A. In Forma Pauperis**

27 The district court may permit indigent litigants to proceed in forma pauperis upon
28 completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the
Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963). "A
district court may deny leave to proceed in forma pauperis at the outset if it appears from

1 the face of the proposed complaint that the action is frivolous or without merit.” *Tripathi v.*
 2 *First Nat'l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987).

3 The Court is unable to determine what cause of action might lie with Hannah’s
 4 allegations, and Hannah has not plead any valid causes of action. Based on the Court’s
 5 review of Hannah’s complaint, the Court finds it to be without merit and conceivably
 6 frivolous.

7 Therefore, the Court denies Hannah’s motion to proceed in forma pauperis.

8 **B. Motion for Appointment of Counsel**

9 “28 U.S.C. § 1915(d) confers on a district court the discretion to designate counsel
 10 to represent an indigent civil litigant.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th
 11 Cir. 1986) (citing *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir.1984)). In *Wilborn*,
 12 the Ninth Circuit elaborated on this rule:

13 The rule that counsel may be designated under section 1915(d) only
 14 in “exceptional circumstances” derives from *Weller v. Dickson*, 314 F.2d
 15 598, 600 (9th Cir. [1963]), *cert. denied*, 375 U.S. 845 (1963), which held
 16 that “the privilege of pleading in forma pauperis . . . in civil actions for
 17 damages should be allowed only in exceptional circumstances.” *Weller* was
 18 extended, without comment, to “appointment of counsel” in *United States v. Madden*, 352 F.2d 792, 794 (9th Cir. 1965). *Madden* was then cited for the
 19 rule in *Alexander v. Ramsey*, 539 F.2d 25, 26 (9th Cir. 1976); *United States v. McQuade*, 579 F.2d 1180, 1181 (9th Cir. 1978), on appeal after remand,
 20 (9th Cir.1981), *cert. denied*, 455 U.S. 958 (1983); *Aldabe v Aldabe*, 616
 21 F.2d 1089, 1093 (9th Cir. 1980); and *Franklin v. Murphy*, 745 F.2d 1221,
 22 1236 (9th Cir. 1984). A finding of exceptional circumstances *requires an evaluation of both* “the likelihood of success on the merits [and] the ability
 23 of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.” *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir.
 24 1983), quoted in *Kuster*, 773 F.2d at 1049. Neither of these factors is
 25 dispositive and *both must be viewed together* before reaching a decision on
 26 request of counsel under section 1915(d).

27 *Wilborn*, 789 F.2d at 1331 (emphasis added). The burden to demonstrate a likelihood of
 28 success on the merits rests on a plaintiff. *Id.*

29 In the present matter, Hannah has failed to demonstrate the likelihood of success
 30 on the merits. In fact, Hannah does not even attempt to address the likelihood of success

1 on the merits of his claims. *See* Dkt. 2. Hannah has also failed to demonstrate that other
2 extraordinary circumstances exist.

3 Therefore, the Court denies Hannah's motion for appointment of counsel.

4 **II. ORDER**

5 Therefore, it is hereby **ORDERED** that Hannah's motion to proceed in forma
6 pauperis and motion for appointment of counsel are **DENIED**. If Hannah desires to
7 proceed with this civil action, he shall pay the \$350 filing fee to the Court Clerk not later
8 than February 10, 2011. If he fails to timely submit the filing fee, the Clerk is directed to
9 dismiss this case without prejudice.

10 DATED this 10th day of January, 2011.

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14 BENJAMIN H. SETTLE
United States District Judge